

FILE NO. 990376

ORDINANCE NO. 226-99

1 [Cable Television Franchise Amendments]

2 AMENDING ORDINANCE NO. 105-64, AS AMENDED MOST RECENTLY BY ORDINANCE
3 NO. 42-97, BY AMENDING SECTION 25 REGARDING GRANTEE'S REBUILD OF THE SAN
4 FRANCISCO CABLE SYSTEM, BY ADDING SECTIONS 25.1 THROUGH 25.5 REGARDING
5 GRANTEE'S OBLIGATIONS TO PROVIDE OPEN ACCESS TO ITS CABLE MODEM
6 PLATFORM, TO LIMIT REBUILD RATE INCREASES, TO PROVIDE CABLE MODEM
7 SERVICE TO LIBRARIES, TO PROVIDE A SUBSCRIBER BENEFIT DURING THE
8 REBUILD, AND TO CONSTRUCT THE REBUILT SYSTEM IN COMPLIANCE WITH
9 FEDERAL, STATE, AND LOCAL REQUIREMENTS, BY ADDING SECTION 32.12(e)
10 REGARDING GRANTEE'S OBLIGATION TO PAY FRANCHISE FEES ON CABLE MODEM
11 SERVICES, BY AMENDING SECTION 24(a)(ii) REGARDING GRANTEE'S OBLIGATION TO
12 WIRE CERTAIN BUILDINGS, BY AMENDING SECTIONS 27.1 THROUGH 27.3
13 REGARDING GRANTEE'S TRANSFER OF MANAGEMENT AND CONTROL OF THE
14 PUBLIC ACCESS STATION TO THE COMMUNITY TELEVISION CORPORATION, BY
15 AMENDING SECTION 30 REGARDING SUBSCRIBER PASSTHROUGHS, BY AMENDING
16 SECTION 31(a) AND DEFINITIONS IN SECTIONS 32.10, AND 32.18, AND BY ADDING
17 SECTIONS 31(i), 31(j), 32.22, 32.23, AND 32.24 TO FURTHER CLARIFY GRANTEE'S
18 OBLIGATIONS UNDER THE FRANCHISE.

19 Note: Additions are underlined; deletions are in ((double parentheses)).

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
22 is hereby amended by amending Section 25 as follows:

23 SECTION 25. Rebuild of Cable System

24 (a) ((The Grantee informs the City that it has begun to rebuild the Cable System in the
25 Rebuild Hub Service Areas designated in Appendix E.)) The Grantee shall complete a

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1 Rebuild of the San Francisco Cable System in all of the Rebuild Hub Service Areas
2 designated in Appendix E within 48 months of the Effective Date of the Rebuild Ordinance.
3 The Rebuilt System shall have a minimum bandwidth of 750 MHz on all active and passive
4 components, shall provide activated two-way capability, and shall be Comparable to cable
5 systems constructed in similarly situated cities, as set forth in Section 32.24 herein. These
6 specifications for the Rebuilt System shall replace "system requirements" set forth in Section
7 2(a)(1) herein. The Grantee shall ((be entitled to)) use the Rebuilt System to ((make)) provide
8 Upgraded Services ((available)) to Subscribers on a node-by-node basis as soon as possible.
9 ((; provided, however that if the Grantee does not complete the Rebuilt System and offer
10 Upgraded Services to all Subscribers within the Required Service Area within a reasonable
11 period of time, Grantee shall cease providing Upgraded Services to any Subscriber within the
12 geographic boundaries of the City and County of San Francisco. The need to construct and
13 deploy new facilities, the availability of routes, impediments to construction, delays in
14 receiving required permits, and occurrences beyond the foreseeable control of the Grantee
15 shall be considered in determining the reasonableness of the time necessary to offer
16 Upgraded Services to all Subscribers.)) The Grantee understands and agrees that time is of
17 the essence with regard to the commitments contained within the Rebuild Ordinance.

18 (b) Within thirty (30) days of ((On or before)) September 1 and March 1 in each year
19 prior to completion of the Rebuilt System, the Grantee shall file a "Rebuild Progress Report"
20 with the ((Board)) Department of Telecommunications and Information Services ("DTIS"). The
21 Rebuild Progress Report shall include a map in a form agreed to by the City and Grantee
22 identifying the boundaries of all areas (i) in which a node has been activated to provide
23 Upgraded Services to date, and (ii) in which a node was activated to provide Upgraded
24 Services within the previous six months, and (iii) in which a node is expected to be activated
25 to provide Upgraded Services within the subsequent six month period, as well as the number

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1 of homes passed, or expected to be passed by the Rebuilt System with respect to each of the
2 above areas. A node shall be considered activated when it is used to offer Upgraded
3 Services to any Subscriber on a commercial basis.

4 (c) The Grantee will make diligent efforts to identify a hub location in Rebuild Hub
5 Service Area 5, as identified in Appendix E. The Grantee shall notify the City of the status of
6 these efforts within ((6 months after the Date of the Franchise Amendments)) nine (9) months
7 of the Effective Date of the Rebuild Ordinance. If the Grantee reports that it has been able to
8 identify a hub location within Rebuild Hub Service Area 5, ((and if the Grantee is continuing
9 construction to complete a Rebuilt System,)) the Grantee agrees, at the election of the City by
10 written notice within 30 days after receipt of Grantee's notice, to undertake Rebuild
11 construction in Rebuild Hub Service Area 5 prior to undertaking Rebuild construction in
12 Rebuild Hub Service Area 4, as these areas are identified in Appendix E.

13 (d) The Grantee shall not deny any services, including any Upgraded Services, to any
14 group of potential Subscribers because of the income of the residents in the local area in
15 which such group resides.

16 (e) The Grantee shall inform Subscribers at least three (3) days prior to any scheduled
17 or expected temporary interruptions to existing services exceeding five minutes during the
18 period of 5:30 a.m. to 1:00 a.m. Pacific Time which may occur due to construction under the
19 Rebuild Ordinance.

20 (f) The Grantee shall not be excused from the timely performance of its obligation to
21 begin and complete construction of the Rebuilt System and provide Comparable Upgraded
22 Services within the times specified herein, except for the following occurrences: (i) *force*
23 *majeure* delays beyond the control of the Grantee including, without limitation, wars, civil
24 disturbance, flood or other Acts of God, laws, regulations, rules or orders of any governmental
25 agency, sabotage, strikes, failure or delay in transportation, labor, provided that Grantee has

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1 exercised all due care to prevent the occurrence of such events which are reasonably
2 foreseeable; or (ii) delays beyond the control of the Grantee that the Grantee could not
3 reasonably have anticipated, including delays regarding the availability, shipment and arrival
4 of necessary equipment, cables, electronics or hardware, protracted underground excavation,
5 easement availability, receipt of City permits, compliance with the City's joint trenching
6 requirements, receiving approved pole applications in a timely manner, or any other valid
7 factors that are justified in writing to the City and agreed to by the City. Absent a showing of
8 excusable delay pursuant to subsections (i) and (ii) above, should the Grantee be unable to
9 demonstrate that it has materially complied with the commencement or timely completion of
10 construction of the Rebuilt System within the times specified herein, or be unable to
11 reasonably justify any delays, then the Grantee shall be in violation of a material provision of
12 the Franchise, as amended, and the City may, at its sole discretion, either grant the Grantee
13 an extension of time to complete such construction by ordinance of the Board and/or pursue
14 any remedies available under United States or California law, or provided in the Franchise, as
15 amended.

16 The City's receipt and/or review of a Rebuild Progress Report shall in no way excuse or
17 wave any breach of the Franchise, as amended, or other applicable law.

18 (g) Within ninety (90) days of submission of a Rebuild Progress Report demonstrating
19 that Upgraded Services are available to a majority of homes passed within any Rebuild Hub
20 Service Area, Grantee shall, at its own cost and expense, and under the City's supervision,
21 conduct the following proof-of-performance tests ("Tests") at fifteen (15) Subscriber network
22 distribution locations selected by the City and not disclosed to Grantee until the day of the

23 Tests:

- 24 1. Visual carrier levels on each activated Channel;
- 25 2. Aural carrier levels on each activated Channel;

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- 1 3. The calculated difference between the visual and aural carrier levels on each
- 2 activated Channel;
- 3 4. Adjacent Channel video difference on activated Channels;
- 4 5. The difference between the highest video carrier level on any activated Channel
- 5 and the lowest video carrier level on any activated Channel;
- 6 6. Carrier-to-noise ratio on 6 Channels selected by City;
- 7 7. Low frequency distortions on 6 Channels selected by City;
- 8 8. Intermodulation distortions on 6 Channels selected by City; and
- 9 9. Expert rating of picture distortions, if any, on all activated Channels.

10 Prior to the Tests, Grantee shall take the following measurements at its headend,
11 under the City's supervision: (i) video carrier levels and picture quality on all Channels leaving
12 the headend; (ii) audio carrier levels on all Channels leaving the headend; and (iii) FM radio
13 carrier levels, if any. Additionally, prior to the Tests, Grantee shall present the City with copies
14 of current calibration certificates issued by an independent calibration laboratory for all
15 frequency/voltage sensitive equipment that will be used in the Tests.

16 Within ninety (90) days after notification to City by Grantee that it has completed the
17 Rebuild, Grantee shall conduct the Tests under the conditions described above in forty (40)
18 locations selected by the City from the remaining untested Rebuild Hub Service Areas. At
19 that time, Grantee shall also demonstrate to City that the Rebuilt System complies with the
20 FCC signal leakage requirements of 47 CFR Part 76, Subpart K, pursuant to a driving
21 inspection of no less than twenty (20) percent of the Rebuilt System.

22 Grantee shall reimburse the City for the City's reasonable costs to supervise the Tests,
23 not to exceed ten thousand dollars (\$10,000).

24 (h) Grantee warrants and represents that it will diligently comply in good faith with all of
25 the provisions of the Rebuild Ordinance.

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1 Section 2. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
2 is hereby amended by adding Section 25.1 to read as follows:

3 Section 25.1 NONDISCRIMINATORY ACCESS TO BROADBAND INTERNET ACCESS
4 TRANSPORT SERVICES

5 (a) Unless restricted by preemptive Federal or State law, the City may impose a
6 requirement that the Grantee shall provide non-discriminatory access to its cable modem
7 platform to providers of Internet access services, whether or not such providers are affiliated
8 with Grantee, upon any of the following conditions:

9 (1) If, by final order or judgment, a court upholds or affirms the authority of any
10 local government to require a cable operator to provide nondiscriminatory access to its
11 cable modem platform to providers of Internet access services and the City otherwise
12 meets the legal and procedural prerequisites for the imposition of an access
13 requirement. For the purposes of this section, an order or judgment shall be
14 considered final when a court of competent jurisdiction lets stand or affirms such order
15 or judgment has passed. Prior to the enactment or enforcement of any such
16 requirement, Grantee shall be provided with reasonable notice and an opportunity to be
17 heard, including the right to present evidence on any findings made or required to be
18 made by the City.

19 (2) Should AT&T or TCI or their wholly-owned subsidiaries enter into an
20 agreement with a franchising authority that requires nondiscriminatory access to its
21 cable modem platform for providers of Internet access services, provided that any
22 requirement by the City would be subject to equivalent terms and conditions.

23 (b) AT&T will make high speed Internet access available (at speeds exceeding 200
24 Kbps) for any Subscriber in the Service Area who is unable to obtain high speed Internet
25 access from another provider (i.e., DSL, Satellite, wireless). AT&T agrees to develop a cost-

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1 competitive policy for such Subscribers to minimize or eliminate any additional cost to the
2 consumer of connection to the Internet service provider of their choice so as to meet the
3 standard price of receiving both comparable transport and content from a competing high-
4 speed Internet access service.

5 (c) Grantee agrees that Subscribers to its Excite@Home content-enhanced cable
6 modem service shall have access to all content or services generally available to the public on
7 the Internet and shall be able to connect to online service providers, portals and other Internet
8 sites, including the sites of other Internet service providers, without having to view the
9 Excite@Home proprietary content if they so desire.

10 (d) Notwithstanding the foregoing, nothing in this Franchise, nor the City's failure to
11 require open, nondiscriminatory access as a condition of approval of the Resolution Approving
12 Transfer of Control of the Grantee from TCI to AT&T adopted by the Board of Supervisors in
13 File No. 990375 shall prohibit or restrict the City's authority to impose such a requirement on
14 Grantee pursuant to any lawful authority and in accordance with any procedural requirements
15 that may be applicable.

16 Section 3. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
17 is hereby amended by adding Section 25.2 to read as follows:

18 SECTION 25.2 LIMITATION ON REBUILD RATE INCREASES

19 (a) Grantee shall not, under any circumstances, recover from Subscribers the costs of
20 any repairs to bring the Rebuilt System into compliance with lawful Federal, State, and local
21 construction requirements as set forth in Sections 25.5 and 31(j) herein.

22 (b) Regardless of whether the City initiates rate regulation, Grantee shall not increase
23 rates to recover Rebuild costs ("Rebuild Rate Increase") except as provided in this Section.
24 Grantee may not institute a Rebuild Rate Increase for the Basic Service tier (as defined in 47
25 C.F.R. Section 76.901(a)) for any Subscriber until activation of the node serving that

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1 Subscriber and provision of Upgraded Services to that Subscriber. Grantee shall notify the
2 City thirty (30) days before instituting any proposed Rebuild Rate Increase unless Federal
3 rules provide for a longer notice period, in which case, the Federal rules shall apply.

4 Section 4. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
5 is hereby amended by adding Section 25.3 to read as follows:

6 SECTION 25.3 CABLE MODEM SERVICE TO LIBRARIES

7 (a) Grantee shall deliver @Home residential Internet service (or any successor
8 residential Internet access service) ("@Home") at Grantee's sole cost and expense to sixty
9 (60) Libraries designated by the Director of the Department of Telecommunications and
10 Information Services ("DTIS Director"); provided however that Grantee shall have no
11 obligation to deliver service under this section to more than ten (10) Libraries that are not
12 already wired to receive Cable Service and each of those ten (10) Libraries shall have an
13 exterior wall located within 150 feet of existing cable distribution plant. Additionally, Grantee
14 shall have no obligation to provide @Home service to a particular Library location until ninety
15 (90) Days after the date Grantee offers its @Home services on a commercial basis from an
16 activated node capable of serving that location.

17 (b) The Grantee's @Home service to Libraries shall include, at Grantee's sole cost
18 and expense, reasonable interior wiring at the ten (10) non-wired locations and up to thirty
19 (30) feet of additional interior wiring at all other locations, the use of a cable modem, and any
20 other equipment provided by Grantee to its @Home customers that is necessary to receive
21 @Home service, but shall not include personal computers or work stations. @Home service
22 provided to Libraries shall not be used for any commercial purpose.

23 (c) "Library" shall mean (i) any branch location of the San Francisco Public Library; (ii)
24 any library within a public primary, secondary or post-secondary educational institution; and
25 (iii) a digital library, computer center or other similar common use area within any facility

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1 operated by a non-profit corporation that receives Federal, State or local funding to provide
2 housing or related services to low income San Francisco residents.

3 Section 5. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
4 is hereby amended by adding Section 25.4 to read as follows:

5 Section 25.4 SUBSCRIBER BENEFIT DURING THE REBUILD

6 As a benefit to Subscribers who will not realize the benefits of the Rebuild for several
7 years, within four (4) years of the Effective Date of the Rebuild Ordinance, Grantee shall
8 provide to every then current Subscriber household four (4) coupons, each of which can be
9 submitted by the Subscriber as payment in full for one (1) "Pay Per View" movie. Each
10 coupon shall be valid for six (6) months and shall be non-transferable. The language of any
11 billing message or bill insert accompanying the coupons shall be approved by DTIS.

12 Section 6. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
13 is hereby amended by adding Section 25.5 to read as follows:

14 SECTION 25.5 TECHNICAL UPGRADE OF CABLE FACILITIES

15 (a) Multiple Dwelling Units: During the term of the Rebuild, Grantee shall inspect and
16 repair the cable facilities at every multiple dwelling unit (a building with ten (10) or more
17 residential units) ("MDUs") in the Required Service Area of the City so that they comply with
18 the requirements of Section 31(j) herein. Each Rebuild Progress Report shall include a
19 complete list, by street address, of every MDU inspected within the previous six (6) months.
20 Grantee shall certify in the Rebuild Progress Report that the cable drop serving each listed
21 MDU is in compliance with all lawful Federal, State, and local construction requirements
22 pursuant to Section 31(j) herein. Such certification shall be made in writing by a supervisor
23 employed by Grantee with specific knowledge of the compliance of the Rebuilt System with
24 lawful Federal, State, and local construction requirements. The first Rebuild Progress Report
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1 shall certify no less than one hundred (100) MDUs. All subsequent Rebuild Progress Reports
2 shall certify no less than three hundred (300) MDUs each.

3 (b) Maintenance of Cable System: Any time Grantee performs work at a Subscriber
4 location including, but not limited to, an upgrade, a downgrade, a service call, a connection or
5 a reconnection ("Subscriber Service"), Grantee shall inspect the facilities serving the location
6 and perform any maintenance or upgrade required to bring the facilities into compliance with
7 all applicable and lawful Federal, State, and local construction requirements. Grantee shall
8 provide to the Director of the Department of Building Inspection ("DBI Director"), in a form
9 acceptable to the DBI Director, on a monthly basis, a complete list, by street address, of every
10 Subscriber location at which Subscriber Service was performed in the prior month. Such list
11 shall contain a minimum of 4,000 active Subscriber locations.

12 (c) Repair of Cable Drops Necessitated By Electrical Upgrades: Grantee shall inspect
13 and repair every cable drop and associated facility whose compliance with the Municipal Code
14 appears to be affected by an electrical service upgrade within thirty (30) Days of receiving a
15 report of the street address from DBI.

16 (d) Independent Evaluator: Prior to submission of the first Rebuild Progress Report,
17 Grantee shall hire, at its sole cost and expense, an "Independent Evaluator" to inspect
18 facilities and coordinate with Grantee to facilitate repairs pursuant to subsection (f) to ensure
19 compliance with all applicable and lawful Federal, State, and local construction requirements.
20 The Independent Evaluator shall be a qualified, California State licensed electrical engineer.
21 Grantee's selection of the Independent Evaluator shall be approved in writing by the DBI
22 Director. Such approval shall not be unreasonably withheld, provided that the Independent
23 Evaluator shall not be a current or past employee or consultant of Grantee or an Affiliate of
24 Grantee. Approval shall be automatic if the Independent Evaluator is selected from the list of
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1 "Electrical Testing Agencies" maintained by DBI. The Independent Evaluator shall work under
2 the direction of the DBI Director or his or her designee.

3 (e) Inspection Locations: Inspection locations shall be selected by the DBI Director, or
4 his or her designee, from the Subscriber locations identified pursuant to subsections (a), (b),
5 and (c) herein, provided however that the Independent Evaluator shall inspect no more than
6 10% of the total active Subscriber locations in the City.

7 (f) Remedy of Violations: If the Independent Evaluator finds that any portion of the
8 Grantee's facilities at the Subscriber locations are not in compliance pursuant to Section 31(j)
9 herein, the Independent Evaluator shall report such finding to DBI and Grantee concurrently
10 within fifteen (15) Days. DBI may issue a correction notice regarding the non-compliant
11 facility to Grantee. Grantee shall have ten (10) Days from the date of receipt of the correction
12 notice to bring the facility into compliance unless: 1) Grantee is unable to obtain access to the
13 facility, in which case DBI shall provide Grantee an extension of up to thirty (30) Days; or 2)
14 an emergency, as determined in the sole discretion of DBI, requires that such time be
15 shortened.

16 (g) Penalties: In the event Grantee fails to bring any facility into compliance within the
17 time provided pursuant to subsection (f) herein, DBI may issue a notice of violation to Grantee
18 and shall deduct from the Deposit provided in subsection (h) herein a penalty of five hundred
19 dollars (\$500) per non-compliant facility. In the event Grantee fails to repair the violation
20 within ten (10) Days of the notice of violation, Grantee shall be liable for an additional five
21 hundred dollar (\$500) penalty, which shall be deducted from the Deposit provided in
22 Subsection (h) herein. Any penalties imposed pursuant to this subsection shall be deposited
23 in the Building Inspection Fund described in Section 104.5 of the City's 1998 Building Code.

24 (h) Deposit: Within fifteen (15) Days of the Effective Date of the Rebuild Ordinance
25 Grantee shall provide to the DTIS Director a seventy-five thousand dollar (\$75,000) deposit to

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1 guarantee Grantee's faithful performance of the requirements of Sections 25.5 and 31(j)
2 herein ("Deposit"). Grantee shall maintain the Deposit at this level until ninety (90) Days after
3 notification to City by Grantee that the Rebuild is complete. The Deposit shall be held by the
4 City's Controller. Pursuant to the procedures set forth in City Administrative Code Sections
5 10.27-1 through 10.27-7, the Controller may offset from the Deposit all monies due the City
6 under this Section, including, but not limited to, liquidated damages and penalties. Grantee
7 shall redeposit monies within ten (10) days of such an offset to return the Deposit level to
8 \$75,000.

9 (i) Stay of Enforcement Action: In consideration of Grantee's compliance with the
10 obligations set forth in this Section, City shall refrain from pursuing any action against Grantee
11 for any alleged violations of the City's Electrical Code at multiple locations until the Rebuild is
12 completed. However, nothing herein shall prevent the City from pursuing enforcement actions
13 under the Municipal Code against Grantee for violations of lawful Federal, State, or local
14 construction requirements at individual locations. If, at any time, Grantee fails to comply with
15 any of the provisions set forth herein, City shall provide written notice to Grantee of such
16 failure to comply and Grantee shall have thirty (30) Days to cure such failure ("Cure Period").
17 In the event that the failure is not cured to the City's satisfaction within the Cure Period, the
18 City may end its stay described above and pursue any remedies available to it in both law and
19 equity, including, but not limited to, specific performance of this Section 25.5. Within six (6)
20 months of the completion of the Rebuild, unless the DTIS and DBI Directors determine that
21 Grantee has not complied with the provisions of this Section, the City shall provide Grantee a
22 settlement and release of all claims and liabilities arising from a finding of non-compliance
23 during the term of the Rebuild at any of the locations reported to the City pursuant to
24 subsections (a) and (b) and reported to Grantee pursuant to subsection (c).
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1 (j) Compensation for Costs: Grantee shall, within thirty (30) Days after the Effective
2 Date of the Rebuild Ordinance, provide the City with twenty thousand dollars (\$20,000) to
3 cover the City's costs to investigate and inspect potential Municipal Code violations.

4 (k) Billing Messages: At least twice each calendar year, Grantee shall include a billing
5 message to Subscribers regarding how home repair work and other events can affect the
6 safety of cable facilities at their homes and the quality of the cable signal delivered to their
7 homes. The DTIS and DBI Directors shall approve any notice prior to distribution to
8 Subscribers. The notice shall provide a Grantee contact number for Subscribers to request
9 inspection and/or repair of facilities and, at DBI's request, may include a DBI contact number.

10 Section 7. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
11 is hereby amended by amending Section 24.1(a)(ii) to read as follows:

12 (ii) in each of the buildings identified in Appendix B, except Fort Funston, which shall be
13 deleted from Appendix B, within 12 months after the Date of the Franchise
14 Amendments and;

15 Section 8. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
16 is hereby amended by amending Section 27.1(b)(v) to read as follows:

17 (v) Upon forty-five (45) Days notice from the City, the transmission of Public Access
18 Channel access signals shall be moved from 1855 Folsom Street to either 25 Van
19 Ness or 50 Oak Street, as designated by the DTIS Director, or an alternate location
20 agreed upon by the parties. ((If the public access production facility is moved to a
21 location other than 1855 Folsom Street, t)) The Grantee shall move, at no cost to the
22 City, all equipment and facilities necessary to transmit programming upstream from the
23 new location for distribution from the headend. However, if the designated new
24 location is an alternate location, the equipment and facilities will be moved at Grantee's
25 sole cost and expense only so long as the new location can be reached by not more

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1 than 8 blocks of aerial construction from 1855 Folsom Street, 1003 Turk Street, the
2 War Memorial Building or the New Main Library using existing utility poles.

3 Additionally, actual reasonable costs to the Grantee for labor and materials to provide
4 an activated return line from an alternate ((the new)) location shall not exceed \$10,000.

5 Section 9. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
6 is hereby amended by adding Section 27.2(g) to read as follows:

7 (g) In lieu of the payments that would have been due the City but for the delay in the
8 transfer of control of PEG facilities to the City, within thirty (30) days after the Effective Date of
9 the Rebuild Ordinance, Grantee shall make a cash grant to the City in the amount of two
10 hundred and fifty thousand dollars (\$250,000) to support the PEG Channels.

11 Section 10. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
12 is hereby amended by amending Section 27.3 to read as follows:

13 SECTION 27.3 TRANSFER OF CONTROL OVER PUBLIC ACCESS CHANNEL AND
14 PRODUCTION FACILITY

15 (a) On a date designated by resolution of the Board, but in no event later than October
16 1, 1999, the Grantee shall transfer management and control over the public access Channel
17 to the Community Television Corporation ("CTC"); provided, however, that after such transfer,
18 Grantee shall continue to provide upstream transmission of public access signals and the
19 current public access studio and control room for public access production at no cost to the
20 City or the CTC for rent, utilities, janitorial services, or security until March 1, 2000, or until
21 Grantee vacates all of its space at 1855 Folsom, whichever is later. ((and all facilities and
22 equipment used to support the public access Channel to a not-for-profit corporation
23 designated by the Board.)) The City shall provide Grantee thirty (30) Days' notice prior to the
24 transfer and the ((The)) Grantee shall cooperate with the City and the CTC ((not-for-profit
25 corporation)) to accomplish the transfer without interrupting programming on the Channel. ((If

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1 the City elects to have the public access production facility renovated and operated at 1855
2 Folsom Street, the City shall so notify Grantee 90 days prior to the commencement of such
3 renovation and operation, and the transfer of management and control of the public access
4 Channel and the facilities shall take place 90 days after notice; provided, however, that
5 Grantee shall cooperate with the City or its designee to maintain the continuity of
6 programming during any construction that may interfere with the use of the facility, including,
7 but not limited to providing tape and playback capability from another location and scrolling
8 information on the public access Channel. The Grantee shall have no responsibility for
9 leasing premises for a public access production facility after the date on which management
10 and control is transferred to a not-for-profit corporation.))

11 (b) Notwithstanding the deletions to ordinance number 528-88 made by the Franchise
12 Amendments, until the date designated by the Board for transfer of management and control
13 over the public access Channel pursuant to paragraph (a) above, the Grantee shall continue
14 to satisfy the obligations set forth in Ordinance Number 528-88 relating to the public access
15 Channel, including but not limited to the obligations set forth in Appendices 1 through 8
16 thereto; provided, however that prior to the transfer of control pursuant to Section 5.3, the
17 Grantee shall have no obligation to upgrade any public access production equipment. On the
18 Date of the Franchise Amendments, the Grantee shall immediately suspend charges, other
19 than deposits, for use of public access production facilities and equipment.

20 (c) Upon transfer of control of the public access Channel to the ((not-for-profit
21 corporation designated by the Board)) CTC, the Grantee shall deliver to the ((not-for-profit
22 corporation)) CTC the equipment in the existing public access facility identified in Appendix G,
23 and all additional equipment purchased by Grantee for Public Access production prior to
24 October 1, 1999.

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1 (d) With the exception of the duties specified in subsection (a) of this Section,
2 ((A))after transfer of management and control to the CTC ((not-for-profit corporation)), the
3 Grantee's obligations with respect to the public access Channel shall be limited to the duties
4 established in the Franchise Amendments and the Rebuild Ordinance.

5 Section 11. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
6 is hereby amended by amending Section 30 to read as follows:

7 SECTION 30. BENEFITS NOT FRANCHISE FEES / LIMITATION ON SUBSCRIBER
8 PASSTHROUGHS.

9 (a) The Grantee acknowledges that performance of the obligations set forth in this
10 Franchise Agreement shall not in any way modify or affect the Grantee's obligations to pay
11 franchise fees. Although the total sum of franchise fee payments and expenditures required
12 to perform other obligations set forth in this Franchise Agreement may exceed five per cent of
13 Grantee's gross revenues in any 12-month period, expenditures required to perform
14 obligations under the Franchise Agreement shall not be offset or credited against any
15 franchise fee payments due to the City during the term of this Franchise Agreement.
16 Grantee's acknowledgment in this subsection shall not extend to obligations imposed
17 pursuant to Section 29.1 of the Franchise Amendments or otherwise after the Effective Date
18 of the ((Franchise Amendments)) Rebuild Ordinance.

19 (b) The Grantee agrees that no expenditure or increase in expenditures required to
20 perform any of the obligations set forth in the Franchise Amendments or the Rebuild
21 Ordinance shall be itemized on Subscriber bills pursuant to section 622(c) of the Cable Act
22 (47 U.S.C. 542(c)) with the exception of expenditures required pursuant to subsections (f) and
23 (g) of Section 27.2. Grantee further agrees that no expenditures or increases in expenditures
24 required to perform any of the obligations set forth in Sections 24 through 24.7; Sections 25.3
25 through 25.5; Section 26.1; subsection (a) of Section 27.1; subparagraphs (i),(ii),(v) and (vi) of

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1 subsection (b) of Section 27.1; subsections (a), (b), (c) and (d) of Section 27.2; Section 27.3;
2 Section 28, ((and)) Section 28.1, and Section 31(j) of the Franchise Agreement
3 ((Amendments)) shall be passed through or charged to Subscribers in any form whatever.
4 Except as expressly provided to the contrary, nothing in this paragraph shall affect the
5 Grantee's calculation of maximum permitted rates or the treatment of costs in such
6 calculations pursuant to federal law and rate regulations.

7 Section 12. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
8 is hereby amended by amending Section 31(a) to read as follows:

9 SECTION 31. MISCELLANEOUS PROVISIONS

10 (a) The City and the Grantee disagree over their relative rights and obligations under
11 certain provisions of this Franchise Agreement in light of changes in law subsequent to the
12 grant of the Franchise. The Grantee and the City agree that it is to their mutual benefit to
13 agree to the Franchise Amendments and the Rebuild Ordinance without resolving their
14 disagreements over the impact, if any, of changes in law between the date on which the
15 Franchise Agreement was originally adopted and the Date of the ((Franchise Amendments))
16 Rebuild Ordinance on their relative rights and obligations pursuant to the terms of the
17 Franchise as it existed prior to the adoption of the ((Franchise Amendments)) Rebuild
18 Ordinance. The City and the Grantee agree that neither of them shall rely on, nor shall any
19 court or administrative body consider, the execution and performance of the Franchise
20 Amendments or the Rebuild Ordinance, or the failure to modify any provision of the Franchise
21 Agreement in the Franchise Amendments or the Rebuild Ordinance, as a waiver of any claim
22 or defense arising from any change in law between the date on which the Franchise was
23 originally granted and the Date of the ((Franchise Amendments)) Rebuild Ordinance. Nothing
24 in this paragraph shall be construed to affect the Grantee's agreement to faithfully perform all
25 the obligations undertaken in the Franchise Amendments and the Rebuild Ordinance.

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1 Section 13. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
2 is hereby amended by adding Sections 31(i) and 31(j) to read as follows:

3 (i) In the event of an irreconcilable conflict between the provisions of the Rebuild
4 Ordinance and the Franchise as it existed prior to the amendments effected by the Rebuild
5 Ordinance, the provisions and intent of the Rebuild Ordinance shall prevail.

6 (j) All portions of the Rebuilt System, including, but not limited to, headends, hub sites,
7 weather heads, cable drops, overhead and underground trunk and distribution system cables,
8 strand, guying, anchoring, bonding, grounding, and workmanship shall be constructed to
9 comply with all lawful Federal, State, and local construction requirements, including, but not
10 limited to, the City's Municipal Code and California Public Utilities Commission General
11 Orders 95 and 128, as amended.

12 Section 14. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
13 is hereby amended by amending Section 32.10 to read as follows:

14 32.10 "Franchise Agreement" and "Franchise" shall mean all the terms of this
15 franchise originally granted by Ordinance Number 105-64, as amended ((, including the
16 Franchise Amendments, and all exhibits and appendices thereto)).

17 Section 15. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
18 is hereby amended by adding Section 32.12(e) to read as follows:

19 (e) Grantee agrees that @Home residential Internet service (or any successor
20 residential Internet access service) ("@Home") constitutes a Cable Service within the
21 meaning of §32.4 of this Franchise and that Gross Revenues received by the Grantee or any
22 other Cable Operator of the Cable System from the provision of @Home service shall be
23 subject to the payment of franchise fees, unless and until the FCC by final order, or a court of
24 competent jurisdiction, rendering a judgment enforceable in San Francisco, finds that
25 residential Internet access service provided over a Cable System is not a "Cable Service" and

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1 the order or judgment becomes final because a court of competent jurisdiction lets stand or
2 affirms such order or judgment and any time for appeal or review of such order or judgment
3 passes.

4 Section 16. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97
5 is hereby amended by amending Section 32.18 to read as follows:

6 32.18 "Rebuild" or "Rebuilt System" shall mean replacement, upgrade or enhancement
7 of any portion of the facilities installed by the Grantee ((with)) to achieve a signal transmission
8 capacity at or exceeding ((550)) 750 MHz.

9 Section 17. Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97 is
10 hereby amended by adding Sections 32.22 through 32.24 to read as follows:

11 32.22 "Effective Date" shall mean the effective date of an enactment of the San
12 Francisco Board of Supervisors approving the Rebuild Ordinance.

13 32.23 "Rebuild Ordinance" shall mean the Ordinance adopted by the San Francisco
14 Board of Supervisors in Board File No. 990376.

15 32.24 "Comparable" shall mean equivalent to features found in three (3) of five (5)
16 Sample Cable Systems at any time between January 1, 1999 and December 31, 2001. The
17 Rebuilt System shall be Comparable to the Sample Cable Systems if it provides substantially
18 equivalent: range of services; fiber-to-the feeder trunk and feeder design architecture; and
19 stand-by powering of the headend, nodes, and the coaxial portion of the system. The Sample
20 Cable Systems shall be selected by the City from a list of all of the cable systems with more
21 than 140,000 subscribers as of the Effective Date of the Rebuild Ordinance that are owned or

22 /
23 /
24 /
25

1 controlled by AT&T or TCI. Grantee shall provide such a list to City within thirty (30) days of
2 the Effective Date of the Rebuild Ordinance. City shall select five cable systems from the list
3 ("Sample Cable Systems") within ninety (90) days of receipt of the list and shall provide
4 Grantee written notice of its selection.

6 ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

8 CITY & COUNTY OF SAN FRANCISCO:

TELEVISION SIGNAL CORPORATION:

9 Approved By:

10 

11 JULIA M.C. FRIEDLANDER, Director,
12 Department of Telecommunications and
13 Information Services

14 Date: 8/2/99



Signature


Name: John Kapchuk

Title: President

Address: 12647 Atasta Blvd #200
San Ramon, CA 94583

Date: 7/30/99

16 Approved as to form:

17 LOUISE H. RENNE, City Attorney
18 

19 Deputy City Attorney

20 Date: 7/28/99



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 990376

Date Passed:

Ordinance amending Ordinance No. 105-64, as amended most recently by Ordinance No. 42-97, by amending Section 25 regarding grantee's rebuild of the San Francisco Cable System, by amending definitions in Sections 32.10, and 32.18, and by adding Sections 31(i), 31(j), 32.22, 32.23, and 32.24.

July 12, 1999 Board of Supervisors — CALLED FROM COMMITTEE: Board of Supervisors

July 26, 1999 Board of Supervisors — NOT AMENDED

Ayes: 3 - Ammiano, Leno, Yee

Noes: 8 - Becerril, Bierman, Brown, Katz, Kaufman, Newsom, Teng, Yaki

July 26, 1999 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 7 - Becerril, Brown, Katz, Kaufman, Newsom, Teng, Yaki

Noes: 4 - Ammiano, Bierman, Leno, Yee

July 26, 1999 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Leno, Newsom, Teng, Yaki, Becerril, Bierman, Brown, Katz, Kaufman

Noes: 2 - Yee, Ammiano

August 2, 1999 Board of Supervisors — FINALLY PASSED

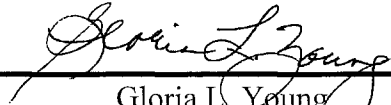
Ayes: 8 - Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Yaki

Noes: 2 - Ammiano, Yee

Absent: 1 - Teng

File No. 990376

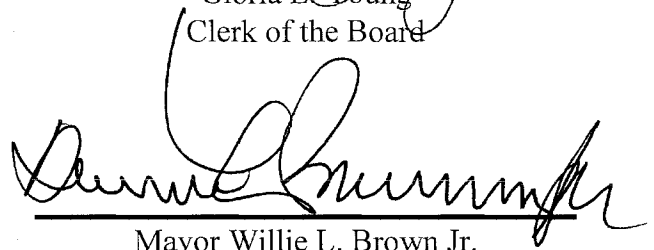
I hereby certify that the foregoing Ordinance was FINALLY PASSED on August 2, 1999 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young
Clerk of the Board

AUG 13 1999

Date Approved



Mayor Willie L. Brown Jr.